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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1958

No. 6, Original.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

THE STATE OF CALIFORNIA.

EXCEPTIONS TO REPORT OF SPECIAL MASTER DATED OCTOBER 14, 1952

and

MOTION FOR LEAVE TO FILE BRIEF AND TO PRESENT ORAL ARGUMENT.

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PAGE

SUBJECT INDEX

PAGE

Exceptions to Report of Special Master Dated October 14, 1952 1

Brief summary of prior proceedings 1

California's exceptions 6

I.

California excepts to the Master's view that the questions here involved are justiciable and can be determined on the basis of past action by the Executive Branch of the Government 6

II.

California excepts to the Master's statement [Report pp. 2-3] that the channels and other water areas between the mainland and the offshore islands are not inland waters.... 6

III.

California excepts to the Master's statement [Report p. 3] that no one of the seven coastal segments under consideration is a bay constituting inland waters..... 7

IV.

California excepts to the Master's recommendation that the waters of the seven coastal segments under consideration are not historic inland waters..... 8

V.

California states its position in respect of the Master's recommendation as to harbors [Report pp. 4, 47-48]..... 9

VI.

California states its position in respect of the Master's recommendation under the heading "Low-water Mark" [Report pp. 39-46]..... 10

Motion for Leave to File Brief and to Present Oral Argument 11

TABLE OF AUTHORITIES CITED

CASES	PAGE
Ocean Industries v. Green, 15 F. 2d 862	8
Ocean Industries v. Superior Court, 200 Cal. 235	8
People v. Stralla, 14 Cal. 2d 617	8
United States v. Carrillo, 13 Fed. Supp. 121	8

ORDER	
Commerce Clearing House, U. S. Sup. Ct. Bull., 1952-53, p. 38-2	4

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Brief Summary of Prior Proceedings.

On October 27, 1947, the Court entered its Decree in this case, reading in part as follows:

> "1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and

> south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein." (332 U. S. 804.)

Jurisdiction was reserved at that time to enter such further order or decrees as might be necessary or advisable.

The above-quoted Decree adjudged that the United States has paramount power in a three-mile belt of water which was known to lie offshore but whose limits had not been precisely described. The decree defined the belt only in the following general terms:

(a) it lies "seaward of the ordinary low water mark on the coast of California";

(b) it lies "outside of the inland waters";

(c) it extends "seaward three nautical miles."

Since the general terms of this Decree did not define inland waters or low-water mark, the Decree was not self-executing and further proceedings were required to identify the location of the marginal belt.

In January, 1948, the United States petitioned the Court for a supplemental decree to determine the exact location of the marginal belt in the three segments of the coastline which are known to contain oil, ignoring the remainder of the coastline. Two preliminary references were made to a Special Master in connection with this petition. In his first Report filed on June 6, 1949, the Master recommended that the location of the mar-

ginal belt should be fixed in seven segments of the California coastline. (337 U. S. 952.) In his second Report, on May 22, 1951, the Master stated the issues which he found to be involved in the proceedings and on June 4, 1951, the Supreme Court permitted the parties to file briefs in relation to the Report. (341 U. S. 946.)*

On December 3, 1951, this Court directed the Special Master to "conduct hearings and to submit to this Court with all convenient speed his recommended answers to the following questions, with a view to securing from this Court an order for his further guidance in applying the proper principles of law to the seven coastal segments enumerated in Groups I and II of the Master's Report of May 31, 1949, ordered filed June 27, 1949, pp. 1 and 2 of said Report." The three questions are:

"Question 1.—What is the status (inland waters or open sea) of particular channels and other water areas between the mainland and offshore islands, and, if inland waters, then by what criteria are the inland water limits of any such channel or other water area to be determined?

"Question 2.—Are particular segments in fact bays or harbors constituting inland waters and from what landmarks are the lines marking the seaward limits of bays, harbors, rivers, and other inland waters to be drawn?

*A more complete résumé of the prior proceedings will be found at pages 1-6 of the Brief in Relation to Report of Special Master of May 22, 1951, which was filed in this Court July 31, 1951.

"Question 3.—By what criteria is the ordinary low water mark on the coast of California to be ascertained?" (342 U. S. 891.)

As stated in the Special Master's Report, hearings were held and testimony was taken in Washington, D. C., and Los Angeles, California, during January, February, March and April of 1952. The transcript of these hearings embraces 1,307 pages. Documentary evidence was also presented, some of which was received in evidence and some of which was excluded as within the reach of judicial notice. Documents so excluded were submitted in written form to the Court, to accompany but not to be a part of the record of proceedings upon which the Master acted.

On October 14, 1952, the Special Master submitted to the Court his Report under the said Order of December 3, 1951, hereinafter referred to as "Report."

On November 10, 1952, the contents of the Report were made known to counsel for the respective parties and the Court made the following Order:

"The report of the Special Master dated October 14, 1952, is received and ordered filed. Exceptions, if any, to the Report of the Special Master may be filed by the parties on or before January 9, 1953." (1952-53 C. C. H., U. S. Sup. Ct. Bull. p. 38-2.)

In compliance with this Order of the Court, the State of California files the following Exceptions to the Re-

port of the Special Master, and with them presents its Motion hereinafter set forth (p. 11).

For the convenience of the Court we are submitting with these Exceptions copies of California's brief filed with the Special Master in which the legal questions and evidence involved in the proceedings before the Master are discussed. We also respectfully suggest that it will be of assistance to the Court to re-examine the "Brief in Relation to Report of Special Master of May 22, 1951," filed with this Court July 31, 1951, and we respectfully call the Court's attention to the maps therein of the water areas claimed by California as inland waters, to the maps of the bays, harbors and straits which have been claimed by other nations as inland waters, and particularly to the map opposite page 54, showing the seaward limit of inland waters along the coast of Norway, as subsequently approved by the International Court of Justice in its decision of December 18, 1951, in the case of *United Kingdom v. Norway*. While these briefs are an aid to understanding the background of these proceedings, they do not, however, reduce the importance of the Court's permitting California to file a brief in support of its exceptions to the present recommendations of the Report of the Special Master now pending, and to present oral argument.

CALIFORNIA'S EXCEPTIONS.

I.

California Excepts to the Master's View That the Questions Here Involved Are Justiciable and Can Be Determined on the Basis of Past Action by the Executive Branch of the Government.

In this connection, California objects to:

A. The Master's failure to hold that the questions involved cannot be determined without action by Congress;

B. The Master's statement [Report p. 7] that this Court has already held that the questions involved are justiciable;

C. The Master's holding [Report pp. 7, 29, 40] that he could not consider what is wise policy for the United States in his answers to the questions propounded;

D. The Master's holding [Report pp. 21, 27] that the Executive has in the past taken a consistent and uniform position which provides criteria for the fixing of the baseline of the marginal belt.

II.

California Excepts to the Master's Statement [Report pp. 2-3] That the Channels and Other Water Areas Between the Mainland and the Offshore Islands Are Not Inland Waters.

In this connection, California objects to:

A. The Master's statement [Report pp. 26, 27, 29] that it is and has traditionally been the position of the United States that the baseline of the marginal belt ignores islands and follows the sinuosities of the coastline except where interrupted by bays not more than 10 miles across;

B. The Master's conclusion [Report p. 27] that the position of the United States as to straits connecting two areas of open sea is that such straits are never inland waters.

III.

California Excepts to the Master's Statement [Report p. 3] That No One of the Seven Coastal Segments Under Consideration Is a Bay Constituting Inland Waters.

In this connection, California objects to:

A. The Master's statement [Report p. 21] that the position of the United States is and traditionally has been that the baseline of the marginal belt follows the sinuosities of the coast except that the baseline is a straight line drawn across the opening of bays, gulfs or estuaries not more than 10 miles wide or, where such opening exceeds 10 miles in width, across the first point in such indentation where the width does not exceed ten miles;

B. The Master's statement [Report pp. 23-26] that only "deep" bays can qualify as inland waters;

C. The Master's view [Report p. 26] that the Boggs formula should be accepted as the method for determining whether a coastal indentation is "deep" despite his conclusion that the Boggs formula does not represent at present or traditionally a definitive position of the United States and despite his conclusion that his responsibility is not to determine what *should* be the policy of the United States.

D. The Master's statement [Report p. 26] that there is no question in these proceedings as to the status of the waters of a coastal indentation less than 10 miles wide but not deep enough to satisfy the Boggs formula.

IV.

California Excepts to the Master's Recommendation That the Waters of the Seven Coastal Segments Under Consideration Are Not Historic Inland Waters.

In this connection, California objects to:

A. The Master's express assumption [Report pp. 9, 30, 39] that the establishment of historic inland waters depends on an assertion of right by or on behalf of the United States and the Master's consequent failure to hold [Report p. 39] that usage and occupancy by a nation and its people can establish waters as historic inland waters, despite his recognition [Report p. 35] that Chesapeake and Delaware Bays have been established as inland waters by "historic usage."

B. The Master's statement [Report p. 30] that the United States has never exercised exclusive authority or asserted exclusive jurisdiction in the water areas involved, despite the positive position taken in the *Amicus* brief filed in the name of and in behalf of the United States in *People v. Stralla,* 14 Cal. 2d 617, at the express direction of the United States Attorney General, the provisions of various acts of Congress, the reports of the United States Corps of Engineers and of Special Boards, and other matters;

C. The Master's statement [Report p. 34] that the rationale of the decisions of *Ocean Industries v. Green,* 15 F. 2d 862 (Monterey Bay held to be a "bay" within the jurisdiction of California); *Ocean Industries v. Superior Court,* 200 Cal. 235 (Monterey Bay again held to be a "bay" within the jurisdiction of California); *People v. Stralla,* 14 Cal. 2d 617 (Santa Monica Bay held to be a "bay" within the jurisdiction of California); and *United States v. Carrillo,* 13 Fed. Supp. 121 (San Pedro Bay

held to be a "bay" from Point Fermin to Point Lasuen within the territory of California), is in direct conflict with the traditional and present position of the United States;

D. The Master's statement [Report p. 35] that California's assertion of the right to control fishing and to enforce its criminal laws did not constitute an assertion of exclusive authority over these waters such as might be the occasion for objection by foreign governments or action by the United States in our international relations;

E. The Master's statement [Report pp. 31, 39] that California made no explicit assertion of exclusive authority over the coastal waters before 1949;

F. The Master's view [Report p. 36] that if San Pedro Bay constitutes inland waters, the contention of the United States as to the southeastern headland of the Bay should be accepted.

V.

California States Its Position in Respect of the Master's Recommendation as to Harbors [Report pp. 4, 47-48], as Follows:

A. While California agrees that "in front of harbors the outer limit of inland waters should embrace an anchorage reasonably related to the physical surroundings and the service requirements of the port" which "absent contrary evidence may be assumed to be the line of the outermost harborworks" [Report pp. 4, 46-48], California objects and excepts to the inference that this recommendation determines the extent of inland waters in any area embraced within this reference, for the reason that all the harbors here under consideration lie either within bays or other larger areas which, of themselves, constitute inland waters.

VI.

California States Its Position in Respect of the Master's Recommendation Under the Heading "Low-Water Mark" [Report pp. 39-46] as Follows:

A. While California agrees that the "ordinary low-water mark on its coast" (as this term is employed in the opinion and in the Order and Decree of this Court in *United States v. California*) is to be established "as it exists at the time of survey" [Report p. 4] and not as it may have been in 1850 [Report p. 45] when California was admitted to statehood, California objects and excepts to the Master's recommendations that this be "the intersection with the shoreline of the plane of the mean of all low waters" [Report pp. 4-5] and contends that it be the intersection with the shoreline "as it exists at the time of survey" of the plane of the mean of all lower-low waters, it being agreed that this may be established from observations made by the United States Coast & Geodetic Survey over a period of 18.6 years.

Respectfully submitted,

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Dated: January 9, 1953.

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California, by its Attorney General, respectfully moves the Court to grant leave to file a brief in support of its Exceptions to the Report of the Special Master, and to have this matter set down for a hearing before the Court at which time counsel for the State of California may have the opportunity of presenting oral argument.

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Dated: January 9, 1953.